

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

MELVIN GRADY,

Plaintiff,

-against-

THE CITY OF NEW YORK and THE NEW YORK CITY
POLICE DEPARTMENT

Defendants.

ANSWER

Jury Trial Demanded

07 Civ. 7754 (AKH)(AJP)

----- X

The City of New York, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the complaint, except admits plaintiff purports to invoke the jurisdiction of the Court as stated therein.
2. Denies the allegations set forth in paragraph "2" of the complaint, except admits plaintiff purports to proceed as stated therein.
3. Denies the allegations set forth in paragraph "3" of the complaint, except admits plaintiff purports to invoke the jurisdiction of the Court as stated therein.
4. Denies the allegations set forth in paragraph "4" of the complaint, except admits plaintiff purports to proceed as stated therein.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "5" of the complaint.
6. Admits the allegations set forth in paragraph "6" of the complaint.

7. Denies the allegations set forth in paragraph "7" of the complaint and respectfully refers the Court to the City Charter and Administrative Code for a recitation of the relationship between the City of New York and the New York City Police Department.

8. Denies the allegations set forth in paragraph "8" of the complaint and respectfully refers the Court to the City Charter and Administrative Code for a recitation of the responsibilities of the New York City Police Department.

9. Denies the allegations set forth in paragraph "9" of the complaint, except admits plaintiff purports to proceed as stated therein.

10. Denies the allegations set forth in paragraph "10" of the complaint.

11. Denies the allegations set forth in paragraph "11" of the complaint, except admits that a purported Notice of Claim was received by the New York City Office of the Comptroller on or about February 6, 2007.

12. Denies the allegations set forth in paragraph "12" of the complaint, except admits that a hearing pursuant to Section 50-H of the General Municipal Law was scheduled for April 3, 2007 and plaintiff did not appear at the hearing and further admits that a stipulation to hold the hearing at a later date was entered into on or about April 30, 2007.

13. Denies the allegations set forth in paragraph "13" of the complaint, except admits that more than thirty (30) days have elapsed since plaintiff has filed the purported Notice of Claim and further admits that defendant has made no adjustment or payment thereof.

14. In response to the allegations set forth in paragraph "13" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1-13" inclusive of its answer, as if fully set forth herein.

15. Denies the allegations set forth in paragraph "15" of the complaint, except admits that plaintiff Melvin Grady was arrested on December 28, 2006 at or about 1:15 a.m.

16. Denies the allegations set forth in paragraph "16" of the complaint, except admits that plaintiff Melvin Grady was charged with violations of Penal Law §205.30, Resisting Arrest, and Penal Law §220.39, Criminal Sale of a Controlled Substance in the Third Degree.

17. Denies the allegations set forth in paragraph "17" of the complaint, except admits that plaintiff was arrested without a warrant.

18. Denies the allegations set forth in paragraph "18" of the complaint.

19. Denies the allegations set forth in paragraph "19" of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to where plaintiff was taken subsequent to being arrested.

20. Denies the allegations set forth in paragraph "20" of the complaint.

21. Denies the allegations set forth in paragraph "21" of the complaint.

22. Denies the allegations set forth in paragraph "22" of the complaint, except admits that plaintiff was arraigned.

23. Denies the allegations set forth in paragraph "23" of the complaint.

24. Denies the allegations set forth in paragraph "24" of the complaint.

25. Denies the allegations set forth in paragraph "25" of the complaint.

26. In response to the allegations set forth in paragraph "26" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1-25" inclusive of its answer, as if fully set forth herein.

27. Denies the allegations set forth in paragraph "27" of the complaint.

28. Denies the allegations set forth in paragraph "28" of the complaint.

29. Denies the allegations set forth in paragraph "29" of the complaint and respectfully refers all questions of law to the Court.

30. Denies the allegations set forth in paragraph "30" of the complaint.

31. In response to the allegations set forth in paragraph "31" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1-30" inclusive of its answer, as if fully set forth herein.

32. Denies the allegations set forth in paragraph "32" of the complaint.

33. Denies the allegations set forth in paragraph "33" of the complaint.

34. Denies the allegations set forth in paragraph "34" of the complaint.

35. Denies the allegations set forth in paragraph "35" of the complaint.

36. In response to the allegations set forth in paragraph "36" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1-35" inclusive of its answer, as if fully set forth herein.

37. Denies the allegations set forth in paragraph "37" of the complaint.

38. Denies the allegations set forth in paragraph "38" of the complaint.

39. Denies the allegations set forth in paragraph "39" of the complaint.

40. Denies the allegations set forth in paragraph "40" of the complaint.

41. In response to the allegations set forth in paragraph "41" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1-41" inclusive of its answer, as if fully set forth herein.

42. Denies the allegations set forth in paragraph "42" of the complaint.

43. Denies the allegations set forth in paragraph "43" of the complaint.

44. Denies the allegations set forth in paragraph "44" of the complaint.

45. Denies the allegations set forth in paragraph "45" of the complaint.

46. In response to the allegations set forth in paragraph "46" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1-45" inclusive of its answer, as if fully set forth herein.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "47" of the complaint, as it is not clear what facts are averred therein.

48. Denies the allegations set forth in paragraph "48" of the complaint.

49. Denies the allegations set forth in paragraph "49" of the complaint.

50. Denies the allegations set forth in paragraph "50" of the complaint.

51. Denies the allegations set forth in paragraph "51" of the complaint.

52. Denies the allegations set forth in paragraph "52" of the complaint.

53. Denies the allegations set forth in paragraph "53" of the complaint.

54. Denies the allegations set forth in paragraph "54" of the complaint.

55. Denies the allegations set forth in paragraph "55" of the complaint.

56. Denies the allegations set forth in paragraph "56" of the complaint.

57. Denies the allegations set forth in paragraph "57" of the complaint.

58. Denies the allegations set forth in paragraph "58" of the complaint.

59. Denies the allegations set forth in paragraph "59" of the complaint.

60. Denies the allegations set forth in paragraph "60" of the complaint.

61. Denies the allegations set forth in paragraph "61" of the complaint as it refers to an unspecified individual.

62. Denies the allegations set forth in paragraph "62" of the complaint.

63. Denies the allegations set forth in paragraph "63" of the complaint.

64. Denies the allegations set forth in paragraph "64" of the complaint.

65. Denies the allegations set forth in paragraph "65" of the complaint.

66. Denies the allegations set forth in paragraph "66" of the complaint.

67. Denies the allegations set forth in paragraph "67" of the complaint.

68. Denies the allegations set forth in paragraph "68" of the complaint.

69. Denies the allegations set forth in paragraph "69" of the complaint.

70. Denies the allegations set forth in paragraph "70" of the complaint.

71. Denies the allegations set forth in paragraph "71" of the complaint.

72. Denies the allegations set forth in paragraph "72" of the complaint.

73. Denies the allegations set forth in paragraphs "73-78" of the complaint,

except admits that plaintiff purports to request relief as set forth therein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

74. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

75. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

76. At all times relevant to the acts alleged in the complaint, defendant acted reasonably in the proper and lawful exercise of its discretion; therefore, it is entitled to state law good faith immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

77. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

78. Plaintiff has failed to comply, in whole or in part, with New York General Municipal Law § 50-e.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

79. Plaintiff cannot recover punitive damages from defendant City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

80. Plaintiff provoked any incident.

AS AND FOR AN EIGHT AFFIRMATIVE DEFENSE:

81. Plaintiff's conspiracy claim is barred by the intra-corporate conspiracy doctrine.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

82. Plaintiff's false arrest and malicious prosecution claims are barred by his conviction.

WHEREFORE, defendant City of New York requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 5, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Room 3-141
New York, New York 10007
(212) 788-0869

By: /s/ Jordan M. Smith
Jordan M. Smith
Assistant Corporation Counsel

To: Richard M. Gutierrez, Esq. (by ECF)
118-35 Queens Blvd., S/1500
Forest Hills, New York 11375